

REMARKS

Overview

The current non-final Office Action dated January 9, 2009 indicates the following: claims 1, 7-15, 63-74, 77 and 79-87 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Carmax (www.carmax.com) in view of Bilibin et al. (U.S. Patent Publication No. 2005/0197892); claims 16-19 and 32-62 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Carmax and Bilibin in view of Nicholls et al. (U.S. Patent No. 5,631,827); claim 77 is rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter; and claims 54-62 are rejected under 35 U.S.C. § 112 second paragraph as allegedly being indefinite.

Applicants hereby amend claims 54, 59-60 and 62 in order to clarify the subject matter of their invention, and cancel claim 58. Thus, claims 1, 7-11, 13-19, 32-57, 59-74, 77 and 79-87 continue to be pending.

Analysis

Rejections Not Based On Cited Art

In the current Office Action, the computer-readable medium claims 54-58 and computing device claims 59-62 have been newly rejected as allegedly being indefinite under 35 U.S.C. § 112, second paragraph. (Office Action dated January 9, 2009, page 2). While Applicants disagree with the bases of these rejections, independent claims 54 and 59 have been amended, and the claims as amended are believed to clearly be definite. In particular, independent computer-readable medium claim 54 has been amended to recite that the contents of the computer-readable medium "include software instructions that when executed configure a computing device to" perform particular recited functionality, and independent computing device claim 59 has been amended to recite that various recited components are each "configured to, when executed by at least one of the one or more processors," perform particular recited functionality. As such, independent claims 54 and 59 are believed to be definite, as are claims

55-58 and 60-62 that depend from claims 54 and 59, respectively. Accordingly, Applicants request that these rejections be withdrawn.

In addition, in the current Office Action, independent computer-readable medium claim 77 has been newly rejected as allegedly being directed to non-statutory subject matter, as the claim is alleged to recite non-functional descriptive material that fails to meet the IEEE definition of a data structure. (Office Action dated January 9, 2009, page 2). No basis has been given to substantiate the assertion that claim 77 recites non-functional descriptive material or that it fails to meet the IEEE definition of a data structure. Moreover, it is clear from the language of claim 77 that it both recites functional descriptive material and satisfies the IEEE definition of a data structure. Attention is directed to MPEP Section 2106.01, "Computer-Related Nonstatutory Subject Matter," which states the following:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) . . . When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.

With respect to claim 77, it recites a data structure that "imparts functionality when employed as a computer component", describes a "logical relationship among data elements, designed to support specific data manipulation functionality," and is "recorded on a computer-readable medium," as specified in MPEP Section 2106.01. In particular, claim 77 recites a "computer-readable medium containing a data structure for use in providing to a user actual fulfillment information for each of multiple distinct fulfillment plans that are options for fulfilling an order, . . . , the data structure comprising a multiplicity of entries each representing one of the multiple fulfillment plans, each entry comprising: an indication of the fulfillment plan; and an indication of actual fulfillment information that reflects the fulfilling of the order if the indicated fulfillment plan is used, the actual fulfillment information for the indicated fulfillment plan including . . ."

As such, claim 77 recites statutory subject matter, in accordance with MPEP Section 2106.01 and corresponding caselaw, and Applicants request that this rejection be withdrawn.

Rejections Based On Cited Art

The current Office Action has rejected each of the previously pending claims as being unpatentable over a combination of Carmax and Bilibin, with some of the claims being further rejected based on Nicholls. However, the pending claims as rejected include features and provide functionality not disclosed or suggested by Carmax, Bilibin or Nicholls, and thus are allowable over those references.

Some embodiments of Applicants' invention are generally related to enhancing operations of a merchant or other item ordering service by automatically identifying multiple alternative fulfillment plans that are options for the merchant to use to fulfill an order from a customer for one or more items, and by automatically determining information about how use of particular fulfillment plan options will affect fulfillment of the order. For example, before receiving an order from a customer for one or more items, the described techniques may be used to automatically select a preferred one of multiple alternative fulfillment plan options for fulfilling the order, such as to enable the customer to receive information about an actual delivery date of the one or more items to the customer (or other recipient) if the customer places the order using a particular fulfillment plan. In at least some embodiments, the merchant or other item ordering service that fulfills orders may have multiple alternative item distribution centers to use in fulfilling orders, such as item distribution centers that are geographically distributed in various locations and that each carry inventory for various items, and may consider alternative fulfillment plans that include using various of the distribution centers as part of the order fulfillment processing.

As one example of features and functionality that are not taught, suggested or otherwise obvious in light of Carmax, Bilibin and Nicholls, the pending claims generally recite that a computer system of a merchant or online order service is used to automatically determine multiple alternative options for fulfilling an order from one or more distribution centers, and to automatically select one of the multiple determined alternative options for use with the order based at least in part on determined types of processing that will occur at the item distribution center(s) if the order is fulfilled using that fulfillment plan option, such as to determine a cost of

use of each fulfillment plan option and/or actual delivery time information. Such determined processing at the item distribution center(s) is recited in various of the pending claims to include, for example, to “prepare the order to be packaged and shipped” and “preparing the items for the transporting of the items from those indicated distribution centers.” For example, independent computer-implemented method claim 16 recites the following:

... under control of a computer system of the merchant, and upon receiving the indication and before receiving the request to initiate the ordering process to order the items,

automatically determining multiple fulfillment plans that are options for fulfilling an order for the items, each fulfillment plan indicating one or more distribution centers . . . [that are] a selected subset of multiple alternative distribution centers of a merchant that each are available to supply at least one of the indicated items;

for each of at least some of the determined fulfillment plans, automatically determining a time of actual delivery of the items if that fulfillment plan is used to fulfill the order . . . , the determining of actual delivery time based at least in part on information determined about processing that would take place at the distribution centers indicated by the fulfillment plan . . . , the processing that would take place at those indicated distribution centers for that fulfillment plan including preparing the items for the transporting of the items from those indicated distribution centers;

automatically selecting one of the at least some determined fulfillment plans to be used for fulfilling the order based at least in part on the determined actual delivery time for the selected fulfillment plan . . .

Independent computer-implemented method claim 63 as amended similarly recites the following:

... under control of a computer system of a merchant, and for each of multiple alternative distribution centers of the merchant, determining at least one option for fulfilling the order from that distribution center that includes a manner of shipping the order to a recipient;

under the control of the computer system of the merchant, and for each of multiple of the determined options, determining an actual provision date on which the order will be provided to the recipient if that determined option is used for fulfilling the order and determining a cost for fulfilling the order if that determined option is used to fulfill the order, the determining of the actual provision date being based at least in part on processing that would take place at the distribution center for the option to prepare the order to be packaged and shipped; and . . .

The other independent claims 1, 54, 59, 62, and 77 each recite similar language for some or all of the indicated features.

Conversely, Carmax, Bilibin and Nicholls appear to lack any teaching or suggestion to have or use these features in the manner claimed. Nonetheless, the current Office Action appears to allege that pages 3 and 8 of Carmax teach the recited claim elements of claim 63 of, “for each of multiple of the determined options, . . . , the determining of the actual provision date [on which the order will be provided to the recipient if that determined option is used for fulfilling the order] being based at least in part on processing that would take place at the distribution center for the option to prepare the order to be packaged and shipped;” the recited claim elements of claim 16 of “for each of at least some of the determined fulfillment plans, . . . , the determining of actual delivery time [of the items if that fulfillment plan is used to fulfill the order] based at least in part on information determined about processing that would take place at the distribution centers indicated by the fulfillment plan . . . , the processing that would take place at those indicated distribution centers for that fulfillment plan including preparing the items for the transporting of the items from those indicated distribution centers;” and the corresponding recited elements of the other independent claims. (Office Action dated January 9, 2009, pages 4-5 and 9-10, although the discussion of claim 63 merely relies on the claim elements of claim 1, and the discussion specific to claim 16 appears to mistakenly recite claim elements of claim 1 rather than claim 16).

Despite these allegations in the current Office Action, as well as in the previous Office Action dated June 13, 2008, Applicants’ previous Response (filed October 14, 2008) to the previous Office Action demonstrated that the previous Office Action failed to provide even a *prima facie* case of obviousness for these claim elements. That information from Applicants’ previous Response is included below for reference purposes, with modifications to further address the newly cited Nicholls prior art reference. Nonetheless, the current Office Action has again failed to address these recited claim elements, and does not appear to address Applicants’ previous demonstration in any manner. As such, the current Office Action continues to fail to provide even a *prima facie* case of obviousness for these claim elements.

In particular, in each of Carmax, Bilibin and Nicholls, there is no notion of a computer system of a merchant that automatically evaluates alternative fulfillment plan options using information about processing that would take place at one or more item distribution centers of

the merchant, and more generally, Carmax, Bilibin and Nicholls do not appear to include any notion of using such information in any manner.

With respect to Carmax, the cited disclosure appears to describe how a user can search a database of new and used vehicles to identify particular vehicles that satisfy search criteria specified by the user. The identified vehicles in the search results may be physically located in one or more stores, depending on the search criteria. The user may then select a particular vehicle to purchase if so desired. If the selected vehicle is located at a non-local store, transfer fees may in some cases be added for bringing the vehicle to a local store. The different car stores of Carmax are likely just parking lots on which vehicles are parked, with no indication of any processing that is performed on a vehicle when it is provided to a user. Moreover, the cited pages from the Carmax reference, which are reproduced below for reference purposes, contain no teachings or suggestions of any kind related to the recited claim elements, despite the assertions of the previous and current Office Actions.

With respect to Bilibin, it appears to generally disclose that an auction seller may currently have possession of an item that is to be auctioned, and may benefit from assistance in shipping that item to an auction buyer. Accordingly, the Bilibin system allows such an auction seller to specify multiple alternative shipping companies that may be used to ship the item from a single starting location to a destination location of a buyer, and to obtain shipping prices corresponding to use of those shipping companies. Since Bilibin lacks the idea of any distribution centers, as it discloses having a single fixed location from which a single copy of the item being auctioned will be shipped (*e.g.*, the item is to be picked up from the seller's home, or the seller will drop off the item at a designated Mail Boxes Etc. store or other designated third-party location), it has no reason to consider evaluating a fulfillment plan option based on considering processing that would occur at one or more distribution centers.

With respect to Nicholls, it appears to generally disclose the use of logistics management software by small businesses that ship packages. In a manner similar to Bilibin, the software appears to be able to be configured with information about different shippers' costs and delivery times, so that the software can select particular shipping options in particular situations. However, as with the other references, Nicholls appears to lack any teaching or suggestion to obtain any information about processing that would take place at particular distribution centers

as part of particular fulfillment plans, or to use such information in any manner, let alone as part of selecting a particular shipping option based on how such information affects actual delivery dates.

As previously noted, the portions of Carmax cited by the previous and current Office Actions related to the recited claim elements are shown below, and include no indication of, for example, "processing that would take place at the distribution center for the option to prepare the order to be packaged and shipped" (claim 63).

Do you transfer used cars between stores?

Yes, we do! We transfer used cars between stores in the same market for FREE! And if you find a car outside of your region, we'll transfer it to the store near you (within a 600-mile radius) for a small fee.

[Click here](#) for details on our used car transfer policy.

Do you transfer new cars between stores?

No, we don't. According to new car franchise laws, new cars can only be sold from a location authorized by the manufacturer. But because of our incredibly low prices, many customers often visit the CarMax of their choice and drive home their new car the same day.

[Click here](#) for the CarMax store near you.

Carmax, "About Transferring Cars," page 3.

Used Car Transfer Fees* & Delivery Times														* \$150 of any fee can be applied toward purchase of the transferred vehicle.	
From / To	Atlanta	Balt. & DC	Charlotte	Chicago, Kenosha	Dallas Ft. Worth	South Fla.	Central Fla.	Greenville S.C.	Houston	Los Angeles	Nashville	Raleigh	Richmond	San Antonio	
Atlanta	Free 4 Days	\$400 21 Days	\$150 7 Days	\$450 21 Days	\$450 21 Days	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$450 21 Days	\$750 28 Days	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$475 21 Days	
Baltimore & DC	\$400 21 Days	Free 4 Days	\$150 7 Days	\$450 21 Days	\$600 21 Days	\$500 21 Days	\$450 21 Days	\$150 7 Days	\$650 21 Days	\$800 28 Days	\$450 21 Days	\$150 7 Days	\$150 7 Days	\$650 21 Days	
Charlotte	\$150 7 Days	\$150 7 Days		\$450 21 Days	\$550 21 Days	\$350 14 Days	\$150 7 Days	\$150 7 Days	\$550 21 Days	\$800 28 Days	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$600 21 Days	
Chicago & Kenosha	\$450 21 Days	\$450 21 Days	\$450 21 Days	Free 4 Days	\$450 21 Days	\$550 21 Days	\$500 21 Days	\$450 21 Days	\$550 21 Days	\$600 28 Days	\$150 7 Days	\$450 21 Days	\$450 21 Days	\$600 21 Days	
Dallas & Fort Worth	\$450 21 Days	\$600 21 Days	\$550 21 Days	\$450 21 Days	Free 4 Days	\$600 21 Days	\$450 21 Days	\$450 21 Days	\$150 7 Days	\$600 21 Days	\$350 21 Days	\$650 21 Days	\$550 21 Days	\$150 7 Days	
Southern Florida	\$150 7 Days	\$500 21 Days	\$350 14 Days	\$550 21 Days	\$500 21 Days	Free 4 Days	\$150 7 Days	\$400 21 Days	\$500 21 Days	\$800 28 Days	\$450 21 Days	\$350 14 Days	\$450 21 Days	\$500 21 Days	
Central Florida	\$150 7 Days	\$450 21 Days	\$150 7 Days	\$500 21 Days	\$450 21 Days	\$150 7 Days	Free 4 Days	\$150 7 Days	\$450 21 Days	\$800 28 Days	\$350 21 Days	\$150 7 Days	\$350 14 Days	\$450 21 Days	
Greenville, SC	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$450 21 Days	\$450 21 Days	\$400 21 Days	\$150 7 Days		\$450 21 Days	\$800 28 Days	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$500 21 Days	
Houston	\$450 21 Days	\$650 21 Days	\$550 21 Days	\$550 21 Days	\$150 7 Days	\$500 21 Days	\$450 21 Days	\$450 21 Days	Free 4 Days	\$800 21 Days	\$400 21 Days	\$550 21 Days	\$600 21 Days	\$150 7 Days	
Los Angeles	\$750 28 Days	\$800 28 Days	\$800 28 Days	\$600 28 Days	\$500 21 Days	\$800 28 Days	\$800 28 Days	\$800 28 Days	\$500 21 Days	Free 4 Days	\$650 28 Days	\$800 28 Days	\$800 28 Days	\$550 21 Days	
Nashville	\$150 7 Days	\$450 21 Days	\$150 7 Days	\$150 7 Days	\$350 21 Days	\$450 21 Days	\$350 21 Days	\$150 7 Days	\$400 21 Days	\$650 28 Days		\$150 7 Days	\$150 7 Days	\$500 21 Days	
Raleigh	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$450 21 Days	\$550 21 Days	\$350 14 Days	\$150 7 Days	\$150 7 Days	\$550 21 Days	\$800 28 Days	\$150 7 Days		\$150 7 Days	\$600 21 Days	
Richmond	\$150 7 Days	\$150 7 Days	\$150 7 Days	\$450 21 Days	\$550 21 Days	\$450 21 Days	\$350 14 Days	\$150 7 Days	\$600 21 Days	\$800 28 Days	\$150 7 Days	\$150 7 Days		\$600 21 Days	
San Antonio	\$475 21 Days	\$650 21 Days	\$600 21 Days	\$600 21 Days	\$150 7 Days	\$500 21 Days	\$450 21 Days	\$500 21 Days	\$150 7 Days	\$550 21 Days	\$500 21 Days	\$600 21 Days	\$600 21 Days		

Carmax, page 8.

Thus, Carmax, Bilibin and Nicholls do not teach or suggest using information about processing that takes place at a merchant's item distribution centers to automatically determine information about an option for fulfillment of an order.

Moreover, not only does the current Office Action appear to lack any indication of where such claimed functionality is present in the cited prior art references, it also fails to provide any reason that one of skill in the art would be motivated to modify the systems of the prior art references to include such functionality that they lack, or how the prior art reference systems could even obtain the recited types of information to use in the recited manners. Applicants note that the Supreme Court recently emphasized in its *KSR v. Teleflex* ruling (U.S. Supreme Court, 2007) that a finding of obviousness should be supported by an explicit reason that one of skill in the art would have been motivated to modify existing systems or techniques to achieve the claimed systems or techniques. In this situation, one example of why one skilled in the art would not have a reason to modify the Carmax, Bilibin and Nicholls systems to achieve the benefits of Applicants' inventive techniques recited in the pending claims is that the prior art reference systems are not related to a merchant's automated fulfillment of orders for items from multiple

alternative item distribution centers, and thus they would have no reason to include such functionality. Accordingly, no reason has been demonstrated why one of skill in the art would be motivated to modify the Carmax, Bilibin and Nicholls systems to include the various claimed elements that those systems lack, and all of the pending claims are further patentable for this reason as well.

Accordingly, each of the pending claims is patentable over Carmax, Bilibin and Nicholls for at least these reasons.

In addition, some of the pending claims include further recitations about particular types of processing that takes place at a merchant's item distribution centers to automatically determine information about an option for fulfillment of an order, and about how that information is used in the recited automated determinations performed by the merchant's computer systems. As one example, claims 15 and 43 as previously rejected recite the following, with emphasis added, and claim 81 includes similar recitations.

[claim 43] wherein the determined information about the processing that would take place at the distribution centers indicated by the selected fulfillment plan includes an indication of one or more processing lanes to be used at each of the distribution centers indicated for the selected fulfillment plan, such that the determining of the actual delivery time for the selected fulfillment plan is further based in part on the indicated one or more processing lanes.

[claim 15] wherein at least some of the determined fulfillment plans additionally indicate one or more processing lanes to be used at each of the indicated item distribution centers, and wherein, for each of the at least some determined fulfillment plans, the determining of the actual delivery date for that fulfillment plan is based at least in part on the one or more processing lanes indicated to be used for that fulfillment plan.

The current Office Action fails to provide any indication of why the recited claim elements are obvious in light of the prior art, and in fact admits that Carmax and Bilibin fail to disclose such functionality, stating "Carmax and Bilibin . . . fail to disclose the fulfillment plans including processing lanes." (Office Action dated January 9, 2009, page 8, with respect to claim 15, and similar indication on pages 12-13 with respect to claim 43). Instead, the current Office Action alleges that the recited claim elements are nonfunctional descriptive material and not functionally involved in the recited steps, stating "[t]he steps of providing the delivery fulfillment plans and

indicating the fulfillment plans, would be performed the same regardless of whether the plans included the processing lanes due to the fact that no further steps use the information on the processing lanes for any other reason.” (Office Action dated January 9, 2009, pages 12-13 and 8). However, this allegation of the recitations being nonfunctional descriptive material is clearly incorrect, as claim 43 recites that “the determining of the actual delivery time for the selected fulfillment plan is further based in part on the indicated one or more processing lanes” and recites “selecting one of the at least some determined fulfillment plans to be used for fulfilling the order based at least in part on the determined actual delivery time for the selected fulfillment plan,” and claim 15 recites similar language. Accordingly, the information about the processing lanes is used in automatically determining actual delivery time, and the automatic selecting and use in claim 43 of a particular fulfillment plan is based on that automatically determined actual delivery time.

Thus, as it is clear that the claim recitations are not nonfunctional descriptive material, and since the current Office Action admits that the relied-upon prior art does not disclose such functionality, Applicants submits that these claims are further allowable for at least this reason.

Thus, for at least the reasons discussed above, the pending independent claims are patentable over Carmax, Bilibin and Nicholls. In addition, the pending dependent claims include the features of those claims from which they depend, and are thus allowable for the same reasons as those claims. Moreover, the pending dependent claims also recite additional features lacking in the cited references, and are thus allowable on the basis of those features as well.

For example, some of the pending claims generally recite that the determining of the cost of use for a particular fulfillment plan option for a current order includes modeling future costs of supplying future orders, and further includes costs assigned to reduction in customer goodwill based on using that particular fulfillment plan, such as claims 14 and 40 as previously rejected. The current Office Action does not provide any indication of corresponding disclosure in the cited prior art, other than a reference to two paragraphs in Bilibin that makes no mention of customer goodwill, nor of costs of expected future orders that are based on the current use of a particular fulfillment plan. The current Office Action instead argues that the ‘expected future orders’ recited in “future costs of supplying expected future orders . . . if the indicated items are supplied to the customer using the fulfillment plan” (claim 14) can be interpreted to be a current

cost for a current order if the current order is not yet completed. Despite these allegations, however, claims 14 and 40 make abundantly clear that the expected future orders are distinct from the current order, with claim 14 reciting that “the expected future orders being from multiple customers for multiple items and being distinct from the potential order for the items by the customer,” and claim 40 reciting similar language. Accordingly, for both of these reasons related to modeling future costs of expected future orders and to assigning costs to reductions in customer goodwill, claims 14 and 40 are further patentable over the cited prior art references. Various other dependent claims recite other additional features lacking in the cited references, and are thus allowable on the basis of those features as well, although these additional features are not enumerated here for the sake of brevity.

Conclusion

In light of the above remarks, Applicants respectfully submit that all of the pending claims are allowable. Applicants therefore respectfully request the Examiner to reconsider this application and timely allow all pending claims. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 694-4815.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
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